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September 19, 1994

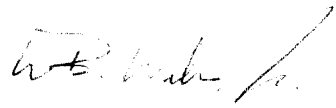
Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Suite 222
Washington, D.C. 20554

Re: PR File No. 94-SP3

Dear Mr. Caton

Attached hereto for filing in the above-captioned proceeding are an original and four copies of the National Cellular Resellers Association's Request for Access to California Petition for State Regulatory Authority Pursuant to the Terms of a Protective Order. A copy of the request has also been mailed to the parties on the attached service list. Should you have any questions concerning this filing, please contact the undersigned.

Very truly yours


William B. Wilhelm, Jr.

Enclosures

BEFORE THE

Federal Communications Commission

In the Matter of)	
)	
Petition of the People of the State of)	
California and the Public Utilities)	
Commission of the State of California to)	PR File No. 94-SP3
Retain Regulatory Authority Over)	
Intrastate Cellular Service Rates)	
)	

**REQUEST FOR ACCESS TO CALIFORNIA PETITION FOR
STATE REGULATORY AUTHORITY PURSUANT TO
THE TERMS OF A PROTECTIVE ORDER**

Pursuant to Section 332(c)(3) of the Communications Act, the National Cellular Resellers Association respectfully request that the materials submitted on a confidential redacted basis to the Commission in the above-captioned proceeding by the California PUC be made available to the public pursuant to the terms of a Protective Order. Following the issuance of such Order, interested parties should be permitted a reasonable period of time to agree to the terms of the Order, and amend their comments if needed.

Section 332(c)(3) of the Communications Act provides that the Commission shall grant a State petition for regulatory authority over rates upon a showing that--

- (i) market conditions with respect to such services fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory; or (ii) such market conditions exist and such service is

a replacement for land line telephone exchange service for a substantial portion of the telephone land line exchange service within such State.

The Commission placed upon States wishing to retain regulatory authority the burden of proof and requested specific, detailed information including: "rate information for each commercial mobile radio service provider," "specific allegations of fact. . . regarding anti-competitive or discriminatory practices or behavior," and other "[e]vidence . . . includ[ing] an examination of the relationship between rates and costs." 20 C.F.R. § 20.13.

Section 332(c)(3)(A) states that the Commission shall provide parties wishing to respond to petitions for state regulatory authority with a "reasonable opportunity for public comment in response to such petition." 47 U.S.C. §§ 332(c)(3)(A), (B). The Commission has further stated that it "must allow public comment on any such petition." Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, 9 F.C.C. Rcd. 1411 at fn. 494 (1994). (Emphasis supplied.)

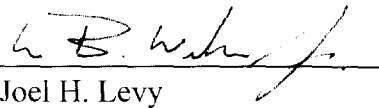
In light of the statutory and regulatory requirement that the public be allowed to comment on any petition, the Commission must provide that the information submitted by California in response to the Commission's detailed request be made available to the public for comment. To the extent that the information which has been redacted in this proceeding was obtained by the State of California under a promise of confidentiality or is otherwise commercially sensitive or constitutes trade secrets, it should be made available for public comment pursuant to a Protective Order. See Abbott Laboratories v. Young, 691 F.Supp. 462, 467 (D.D.C. 1988), remanded 920 F.2d 984 (1990), cert. denied Abbott Laboratories v. Kessler, 112 S. Ct. 76 (1991); Home Box Office v. FCC, 567 F.2d 9, 51-58 (D.C. Cir. 1977), cert. denied 434 U.S. 829; Portland Cement Ass'n v. Ruckelshaus, 486 F.2d

375, 393 (D.C. Cir. 1973), cert. denied, Portland Cement Corp. v. Administrator, EPA, 417 U.S. 921 (1974). The Commission should note that the California Commission provided for the availability of this confidential information via non-disclosure agreements in a May 4, 1994 ALJ ruling (attached hereto) in response to duopoly cellular carrier requests to an April 11, 1994 ALJ requesting such data.

As such, NCRA submits for the Commission a Protective Order and respectfully requests that the Commission adopt such order and permit parties access to the California Petition pursuant to their agreeing to abide by the terms of the Order. Furthermore, parties agreeing to abide by the Order should be permitted a reasonable period of time to amend their comments in this proceeding.

Respectfully submitted

NATIONAL CELLULAR RESELLERS
ASSOCIATION

By: 
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William B. Wilhelm, Jr.

Cohn and Marks
Suite 600
1333 New Hampshire Ave., NW
Washington, DC 20036
(202)293-3860

Its Attorneys

Dated: September 19, 1994

TRP/sid

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)	
Own Motion into Mobile Telephone)	I.93-12-007
Service and Wireless Communications.)	
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**ADMINISTRATIVE LAW JUDGE'S RULING
GRANTING EXTENSION OF TIME TO PROVIDE SUPPLEMENTAL
INFORMATION AND PROVIDING FOR ACCESS OF CONFIDENTIAL DATA**

By Administrative Law Judge (ALJ) ruling dated April 11, 1994, various cellular carriers were directed to provide certain information by April 29, 1994, with respect to operations within their service areas. During the week of April 25, 1994, a majority of these carriers filed motions for extension of time to submit the data as directed in the ruling. These motions are summarized below.

On April 25, 1994, Century El Centro Cellular Corporation filed a motion for an extension until May 13, 1994, to provide information responsive to the April 11 ruling. Century explains that because of its transition to new vendor billing, accessing the data required to respond to the April 11 ruling has been more difficult. As a result, Century asks the time extension to compensate for the delays it has encountered in compiling the data response.

On April 27, 1994, Fresno MSA Limited Partnership and Contel Cellular of California, Inc. filed a motion for an extension until May 13, 1994. The carriers assert that delays in meeting the deadline have been experienced due to archive retrieval constraints and related data compilation problems.

On April 27, 1994, GTE Mobilnet of California (GTE) also filed for an extension of time until May 16, 1994, asserting similar problems in compiling data. GTE notes also that the individual responsible for compiling data responses is simultaneously charged with compiling data in other contexts.

Since a subsequent ALJ ruling dated April 22, 1994, has directed further compilation of data due on May 16, 1994, GTE believes it can provide all of the data sought through both ALJ rulings by the latter date.

On April 29, 1994, McCaw Cellular Communications, Inc. filed a motion for an extension of the deadline on behalf of three of the cellular carriers which were directed to respond to the April 11 ruling. McCaw seeks an extension of time until May 6, 1994 to file responses to the April 11 ruling because it has taken longer than anticipated for McCaw to compile and review the pertinent documentation. McCaw submits that neither the Commission nor any interested party will be adversely affected by its request for more time.

On April 29, 1994, Airtouch Cellular submitted a letter to the ALJ by facsimile requesting an extension to May 2, 1994 to provide responses. Airtouch stated the extension would ensure that all available information responsive to the ruling was being provided. By telephone message on May 2, 1994, legal counsel for Airtouch advised the ALJ that the responsive material would not be finalized in time for submission on May 2, and requested one additional day extension for submission of the response.

On April 29, 1994, US West Cellular of California (US West) submitted a letter likewise stating that it would be unable to meet the deadline for providing the data because the compilation had "proven to be a formidable task in the two weeks" since receiving the ALJ ruling. US West references motions filed by "at least two other carriers" seeking a time extension, and asks that those motions be granted and that the extension be applied to all carriers identified in the ruling.

Discussion

A number of the cellular carriers seeking an extension did not notify the ALJ of an anticipated delay in meeting the deadline for responses until the day responses were due. As a

result, this ruling on the motions is being issued after the responses have become overdue. In the future, parties should attempt to anticipate delays in meeting deadlines as early as possible rather than waiting until the deadline is at hand to notify the ALJ that a deadline cannot be met and to seek remedial relief.

Given the difficulties in compiling the requested information as explained in the pleadings, time extensions will be granted not to exceed the date requested by each carrier. These extensions provide ample time for responses to be made, and no further approval of extensions should be expected.

The request of US West to grant a blanket extension to all carriers is denied. US West provides no basis justifying a blanket extension date applied to everyone. Each carrier has made its own independent assessment of how much additional time it needs, and should be held to that assessment. US West does not indicate how much of an extension it requires, but merely references the requests for extensions of "at least two other carriers." Since each carrier has asked for a different length of extension, it is unclear which time extension US West has in mind for itself. US West will be granted an extension equal to that of Century.

Nondisclosure of Data

Some of the data which has been already submitted in response to the April 11 ruling has been provided confidentially ✓ under General Order (GO) 66-C and Public Utilities (PU) Code § 583. The cellular carriers which assert claims of confidentiality with respect to data submitted to the Commission bear the burden to prove that they are entitled to keep such data from public scrutiny. As stated in Pacific Bell, 20 CPUC 2d 237, 252 (1986), confidential treatment should be granted only upon a showing that release of the data would lead to "imminent and direct harm of major consequence, not a showing that there may be a harm or that

the harm is speculative and incidental." Accordingly, any cellular carrier asserting claims of confidentiality for data submitted in this proceeding shall submit a motion for protection from disclosure, providing justification as called for in the above-referenced Pacific Bell decision. Those parties which have already filed responsive data pursuant to the ALJ ruling under GO 66-C shall likewise file a motion for nondisclosure, explaining the nature of the harm which would result from disclosure.

The Commission's Division of Ratepayer Advocates will have access to such confidential data subject to the provisions of PU Code § 583. Other parties to the proceeding are restricted from reviewing confidential data absent a ruling ordering public disclosure of the data or execution of a nondisclosure agreement permitting limited access under prescribed conditions. For purposes of the data provided in this proceeding subject to confidentiality claims under GO 66-C and PU Code § 583, the procedures outlined below shall be followed on an interim basis pending a final ruling on the merits of asserted confidentiality claims.

IT IS RULED that:

1. The following cellular carriers shall be granted an extension until the dates designated below to provide the data as directed in the ALJ ruling of April 11, 1994:

Fresno MSA and Contel Cellular	May 16, 1994
GTE Mobilnet	May 16, 1994
Century El Centro Cellular Corp.	May 13, 1994
US West Cellular	May 13, 1994
McCaw Cellular	May 6, 1994
Airtouch Cellular	May 3, 1994

2. In addition to the ALJ, a copy of the response should be provided to the Commission Advisory and Compliance Division, Attention: Fassil Fenikile (415-703-3056).

3. Any carrier asserting confidentiality claims with respect to the data provided pursuant to either the April 11 or April 22 rulings shall file a motion no later than May 16, 1994 seeking protection from public disclosure of such data together with justification as to the imminent and direct harm which would result from such disclosure.

4. Without prejudice as to the merits of any claims of confidentiality asserted for data provided pursuant to the April 11 or April 22 rulings, access to such data by other parties to the proceeding shall be governed through appropriate nondisclosure agreements.

5. Any party to this proceeding (other than the Commission's Division of Ratepayer Advocates) interested in reviewing any of the data submitted under G0 66-C subject to claims of confidentiality shall advise the respective cellular carrier of its interest in entering into a nondisclosure agreement permitting access to such data as necessary for review in the context of this proceeding.

6. In the event a mutually acceptable nondisclosure agreement cannot be negotiated by May 31, 1994, parties may seek an appropriate ALJ ruling granting remedial relief.

Dated May 5, 1994, in San Francisco, California.

/s/ THOMAS R. PULSIFER

Thomas R. Pulsifer
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Granting Extension of Time to Provide Supplemental Information and Providing for Access of Confidential Data on all parties of record in this proceeding or their attorneys of record.

Dated May 5, 1994, at San Francisco, California.

/s/ FANNIE SID
Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number of the service list on which your name appears.

In the Matter of)	
)	
Petition of the People of the State of)	
California and the Public Utilities)	
Commission of the State of California to)	PR File No. 94-SP3
Retain Regulatory Authority Over)	
Intrastate Cellular Service Rates)	

PROTECTIVE ORDER

1. Non-disclosure of Stamped Confidential Documents. Except with the prior written consent of the Public Utilities Commission State of California ("CPUC"), or as hereinafter provided under this order, no portion of the unredacted version of the Petition of the State of California (Petition) filed in the above-captioned proceeding, including, but not limited to attachments, indices, or exhibits may be disclosed to any person.

2. Permissible Disclosure. Notwithstanding paragraph 1, upon written request to counsel for the CPUC indicating agreement to be bound by this Order, unredacted portions of the Petition may be disclosed to counsel of record for the parties requesting to participate in this proceeding, including in-house counsel who are actively engaged in the conduct of this proceeding; to the partners, associates, secretaries, paralegal assistants, and employees of such an attorney to the extent reasonably necessary to render professional services in this proceeding; to persons with prior knowledge of the documents or the confidential information contained therein, and their agents; and to Commission officials involved in this proceeding. Such documents may also be disclosed to any person designated by the Commission in the interest of justice, upon such terms as the Commission may deem proper.

3. Declassification. A party may apply to the Commission for a ruling that a portion of the reacted petition is not entitled to such status and protection. The State of California shall be given notice of the application and an opportunity to respond. To maintain confidential status, the proponent of confidentially must show by a preponderance of the evidence that there is good cause for the document to have such protection.

4. Confidential Information Filed in the Record. Stamped confidential documents and other confidential information may be offered in the record in reply or opposition to the CPUC petition and submitted to the Commission under seal in this proceeding, provided that any information contained in such responsive pleading based upon CPUC confidential data or additional confidential data shall also be furnished under seal and disclosed to other participants subject to the provisions of Paragraphs 2 and 3 hereof.

5. Filing. If confidential documents are submitted to the Commission in accordance with paragraph 4, the materials shall be filed under seal and shall remain sealed while in the Secretary's office or such other place as the Commission may designate so long as they retain their status as stamped confidential documents

6. Subpoena by Courts or Other Agencies. If a court or another administrative agency subpoenas or orders production of confidential documents which a party has obtained under terms of this order, such party shall promptly notify the party or other person who designated the document as confidential at the pendency of such subpoena or order.

7. Client Consultation. Nothing in this order shall prevent or otherwise restrict counsel from rendering advice to their clients and, in the course thereof, relying generally on examination of stamped confidential documents; provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not make specific disclosure of any item so designated except as otherwise allowed by the Commission.

8. Use. Persons obtaining access to stamped confidential documents under this order shall use the information only for preparation and the conduct of this information and any subsequent administrative proceeding, and shall not use such information for any other purpose, including business, governmental, commercial, or other administrative or judicial proceedings.

9. Non-Termination. The provisions of this order shall not terminate at the conclusion of this proceeding, stamped confidential documents and all copies of same (other than exhibits of record, if any) shall be returned to the party or persons which produced such documents, or at the option of the producer (if it retains at least one copy of the same), destroyed. All counsel of record shall make certification of compliance herewith and shall deliver the same to counsel for the party who produced the documents not more than 150 days after final termination of this project.

10. Modification Permitted. Nothing in this order shall prevent any party or other person from seeking modification to this order.

11. Responsibility of Attorneys. The attorneys of record are responsible for employing reasonable measures to control, consistent with this order, duplication of, access to, and distribution of copies of stamped confidential documents. Parties shall not duplicate any stamped confidential document except working copies and for filing at the Commission under seal.

CERTIFICATE OF SERVICE

I, Shevry Davis, hereby certify that I have this 19th day of September, 1994, caused to be delivered by first-class mail and hand delivery where indicated copies of the foregoing "Request for Access to California Petition for State Regulatory Authority Pursuant to the Terms of a Protective Order" to the following:

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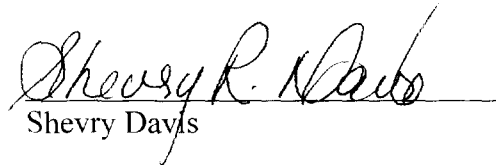
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